



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/154468

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on March 04, 2014, at Racine, Wisconsin.

The issue for determination is whether Community Care, Inc. (Community Care) correctly reduced the Petitioner's supportive home care hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nancy Abels, Care Manager
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On November 17, 2011, Community Care completed an In-Home Assessment Tool (I-HAT) and allocated the following times for the following Activities of Daily Living (ADLs):

Showering (15 times per month)	450 minutes per month
Undressing/Dressing	28 minutes per day
Hair Care	10 minutes per day

Cleaning Dentures	10 minutes per day	
Brush teeth	8 minutes per day	
Eye Glass Care	6 minutes per day	
Nail Care (2x per month)		24 minutes per month
Lotion Application	8 minutes per day	
Toileting	90 minutes per day	
Changing Incontinence Product	20 minutes per day	
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	180 minutes per day	474 minutes per month

$$180 \times 7 = 1260 \text{ minutes per week}$$

$$474 / 4 = 118.5 \text{ minutes per week}$$

$$1260 + 118.5 = 1378.5 \text{ minutes per week}$$

$$1378.5 / 60 = 22.975 \text{ hours per week}$$

(Exhibit 4, pg. 41)

3. The November 17, 2011, I-HAT allocated the following times for the following Routine Homemaking tasks:

Acc. to Medical Appointment (1 x)		20 minutes per month
Cleaning Bedroom	15 minutes per week	
Cleaning Bathroom	16 minutes per week	
Meal Preparation (2x per day)	280 minutes per week	
Clean up dishes	105 minutes per week	
Grocery/Med. Shopping (2x per month)	60 minutes per week	
Linen change (2x per week)	26 minutes per week	
Laundry on-site	30 minutes per week	
Vacuuming & Dusting	10 minutes per week	
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	542 minutes per week	20 minutes per month

$$20 / 4 = 5 \text{ minutes per week}$$

$$542 + 5 = 547 \text{ minutes per week}$$

$$547 / 60 = 9.117 \text{ hours per week}$$

(Exhibit 4, pg. 42)

4. The November 17, 2011 also allowed time for RN Delegated CNA tasks:

Toe Nail Care (1x per month)		14 minutes per month
Feeding/Supervision (3x per day)	420 minutes per week	
Assistance with Med.	49 minutes per week	

441 minutes per week 14 minutes per month

$14/4 = 3.5$ minutes per week

$469 + 3.5 = 472.5$ minutes per week

$472.5 / 60 = 7.875$ hours per week

5. On December 5, 2013, Community Care conducted an annual review and completed a new I-HAT. The following times were allocated for the following ADLs:

Partial Bath (4x per week)	60 minutes per week	
Showering (3 x per week)	90 minutes per week	
Undressing/Dressing (15 min. per day)	105 minutes per week	
Hair Care	49 minutes per week	
Cleaning Dentures	<i>eliminated</i>	
Brush Teeth (6x per week)	48 minutes per week	
Eye Glass Care	<i>eliminated</i>	
Nail Care (2x per month)		24 minutes per month
Shave/Hair Removal	2 minutes per week	
Lotion Application (3x per week)	24 minutes per week	
Toileting (54 x per week)	270 minutes per week	
Chang. Incon. Prod.(21 x per week)	168 minutes per week	
Medication Reminders (12x per week)	60 minutes per week	

876 minutes per week 24 minutes per month

$24/4 = 8$ minutes per week

$876 + 8 = 884$ minutes per week

$884 / 60 = 14.733$ hours per week

(Exhibit 4, pg. 43)

6. The December 5, 2013 I-HAT allocated the following times for the following Routine Homemaking tasks:

Acc. to Medical Appointment (2 x)		120 minutes per month
Cleaning Bedroom	<i>no longer a category</i>	
Cleaning Bathroom	<i>no longer a category</i>	
Basic Housekeeping: Shared	30 minutes per week	
Meal Preparation (6x per week)	180 minutes per week	
Clean up dishes	<i>no longer a category</i>	
Grocery/Shopping	<i>eliminated</i>	
Linen change (2 x per week)	14 minutes per week	
Laundry on-site (2x per week)	60 minutes per week	
Vacuuming & Dusting	<i>no longer a category</i>	
Supervision (3x per day)	420 minutes per week	

704 minutes per week 120 minutes per month

$120 / 4 = 30$ minutes per week

$704 = 30 = 734$ minutes per week

$734 / 60 = 12.233$ hours per week

(Exhibit 4, pg. 44)

7. The December 5, 2013 I-HAT eliminated any time for RN delegated CNA tasks. (Exhibit 4, pg. 44)
8. On December 18, 2013, Community Care sent the Petitioner a Notice of Action, indicating that her services were being reduced effective January 1, 2014. The Description of the current level of service was:
“S5125-116units/wk and 33 units/mo S5130-37 units/wk and 2 units/mo”
The Description of the new level of service was:
“S5125-59 units/wk and 2 units/mo S5130 – 47 units/wk and 8 units/mo”
(Exhibit 1)
9. Subsequently, Community Care amended the Notice of Action and indicated that effective January 2, 2014, Supportive Home Care house would be reduced from 173 hours per month to 117 hours per month.
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 31, 2013. (Exhibit 1)
11. The Petitioner has Alzheimer’s disease “marked in the severity as noted by [REDACTED] Neurologist. The patient is totally incompetent and is not oriented to time and place. The patient it not competent to manage her own affairs or medical decisions.” (Exhibit 2, pg. 4; clinical note entered by Dr. Howard Short).
12. The Petitioner is completely depended upon others for her care. (Exhibit 4, pgs. 33-39)
13. The Petitioner lives with her son, who is her paid caregiver. (Exhibit 4, pg. 33)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. It is, in short, a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Here, Community Care pays Petitioner’s son to provide supportive home care to the Petitioner.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services

that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

The aforementioned administrative code further notes that personal care and supportive home care services are among the services that typically will be required to be available. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services, the agency bears the burden to prove it correctly reduced the services.

In the case at hand, Petitioner filed an appeal because Community Care reduced her supportive home care hours. In comparing the in-home assessment tools completed in 2011 and 2013, it appears a reduction in services occurred in the area of Assistance with Activities of Daily Living from 22.975 hours per week to 14.733 hours per week and in the area of RN delegated CNA tasks from 7.875 hours per week to zero.

DID COMMUNITY CARE CORRECTLY REDUCE PETITIONER'S HOURS FOR ASSISTANCE WITH ACTIVITIES OF DAILY LIVING?

As discussed above, the burden of proof falls upon Community Care to show that they acted correctly.

1. Bathing

The time allowed for showering was reduced from an average 112.5 minutes per week to 90 minutes per week. According to Community Care, it reduced the time for showering, but added time for partial baths, because it was reported that the Petitioner prefers to alternate between the two. Community Care added 60 minutes per week for partial baths. Thus, when combining the time for showering with the time for partial baths total time allowed for bathing per week is now 150 minutes per week, which is a net increase in time allowed for bathing. Because the total time allowed for bathing increased and because the time was changed to accommodate Petitioner's preference, the change is found to be appropriate.

2. Undressing/Dressing

The time for dressing was reduced from 28 minutes per day, seven days a week to 15 minutes per day, 7 days a week. It is unclear from the record why this changed. It is also unclear why the time per day allocated for undressing/dressing was less than the median time allowed per task when the notes in the 12/5/2013 I-Hat indicate that Petitioner can be resistant to cares and struggles due to her Alzheimer's disease. Consequently, it is found that there is no basis in the record for this change in services.

3. Hair Care

The time for hair care was reduced from 10 minutes per day, 7 days a week to 7 minutes per day, 7 days a week. It is unclear from the record why this time was reduced. Indeed, there is no evidence that anything has changed to make it easier for Petitioner or her caregiver to perform this task. Thus, there is no basis in the record for this change in services.

4. Dentures

The time for cleaning dentures was removed. Exhibit 4, pg. 9 contains an RN Case note indicating that the Petitioner does not wear her dentures. As such, it was appropriate to eliminate time for cleaning dentures.

5. Teeth Brushing

The time allowed for teeth brushing was reduced from eight minutes per day, 7 days a week to eight minutes per day, 6 days a week. It is unclear from the record why this change occurred. Although Community Care indicated that the Petitioner visits with her daughter one day a week, the RN Case notes indicate that her son, who is her live-in paid

caregiver, is the one who brushes her teeth. As such, it is found that there is no basis in the record for this change in services.

6. Eyeglass Care

The time for eyeglass care was eliminated. According to the RN Case note in Exhibit 4, the Petitioner does not wear her glasses. As such, it was appropriate to eliminate time for cleaning her glasses.

7. Nail Care

This time was unchanged.

8. Shave / Hair Removal

Two minutes per week was added to remove stray facial hair.

9. Applying Lotion

The time for applying lotion was reduced from 8 minutes per day, seven days a week to 8 minutes per day, 3 days per week. The notes in the I-HAT indicate that this was because the Petitioner does not shower every day, so lotion application was reserved for only those days that she showers. However, Petitioner was not showering every day, before. Indeed, the November 2011 I-Hat indicates that she was showering every other day (15 times per month), but daily lotion application was permitted. Thus, Community Care's reasoning for disallowing daily application of lotion is without merit. Thus, the record does not support the reduction of these services.

10. Toileting

The time for toileting was reduced from 10 minutes an episode, nine times per day, seven days a week (63 times per week) to 5 minutes per day, 54 times a week. It is not entirely clear why the agency changed the level of service here. While the Petitioner might visit with her daughter one day a week, which would perhaps support reducing the number of episodes of toileting allowed from 63 times per week to 54 times per week, there is nothing in the record to support the contention that it now takes less time to toilet the Petitioner. On the contrary, Community Care's own records show that the Petitioner can be resistive to cares. In addition, it should be noted that the I-HAT forms indicate that the median time for toileting is 11 minutes per episode. Thus, the 10 minutes previously allowed was less than the median. As such, Community Care has not met its burden to show that it correctly reduced the amount of time per episode of toileting. Thus, the time allowed should remain 10 minutes per episode, 54 times per week.

11. Changing Incontinent Client

The time allowed for this task was increased from 140 minutes per week to 168 minutes per week.

12. Medication Reminder / Assistance with Medication

The November 2011 I-Hat, allowed time for assistance with medication under RN Delegated CNA tasks at 7 minutes per episode, once a day, seven days a week (49 minutes per week). The December 2013 I-Hat eliminated this service, but added time for Medication Reminders under Assistance with ADLs, at 5 minutes an episode, 12 times per week (60 minutes per week).

The comment in the December 2013 I-Hat is that the caregiver must crush pills before giving them to the Petitioner, which would seem to indicate that the Petitioner needs assistance with her medication and not just a reminder to take the medication. In addition, the RN note from November 4, 2013 indicates that the Petitioner "receives total assistance when taking oral medications due to dementia member can manage no aspect of her meds." The Long Term Care Functional Screen that was completed on November 13, 2013, indicates under Medication/Administration and Medication Management that the Petitioner, "Needs help at least 1x per day, 3-7 days per week – cannot direct the task." (Exhibit 4, pg. 34) The Long Term Care Functional Screen also indicates under Health Related Services – Medication Administration that the Petitioner needs help setting up or selecting medications 1-2 times per day.

Based upon the foregoing, it is found that the task should be returned to the RN Delegated CNA tasks and that the time allowed per task should be restored to 7 minutes, the median time allowed for the task. With regard to frequency, based upon the information in the Long Term Care Functional Screen, it is found that the frequency should remain at 12 times per week, for a total of 84 minutes per week of services.

Thus, the correct time for Assistance with ADLs should be:

Bathing / Showering:	150 minutes per week	
Undressing Dressing:	196 minutes per week	
Hair Care:	70 minutes per week	
Teeth Brushing:	56 minutes per week	
Nail Care:		24 minutes per month
Shave/Hair Removal:	2 minutes per week	
Applying Lotion:	24 minutes per week	
Toileting:	540 minutes per week	
Changing Inc. Prod.	168 minutes per week	
	1206 minutes per week	24 minutes per month

$24 / 4 \text{ weeks} = 6 \text{ minutes per week}$
 $1206 + 6 = 1222 \text{ minutes}$
 $1222 / 60 = 20.4 \text{ average hours per week}$

DID COMMUNITY CARE CORRECTLY ALLOCATE TIME FOR ROUTINE HOMEMAKING TASKS?

1. Accompany to Medical Appointment

The time allowed for medical appointments was increased from 20 minutes per month to 120 minutes per month. There does not appear to be any dispute over this.

2. Housekeeping / Cleaning

The 2011 I-HAT allowed 15 minutes, one time per week for cleaning the Petitioner's bedroom and 16 minutes per week, one time per week for cleaning the Petitioner's bathroom, for a total of 31 minutes per week.

The 2013 I-HAT no longer contained categories for cleaning a bedroom or cleaning a bathroom, but instead consolidated the task to either Basic Housekeeping: Share Living Space, Regular Housekeeping: Resides alone, Apartment or Regular Housekeeping: Resides Alone, Home. Community Care properly selected Basic Housekeeping: Shared Living Space for the Petitioner. The time allowed for this new category of task was 10 minutes, 3 times per week, for a total of 30 minutes per week.

While there is a one-minute per week difference in time, it is negligible. As such, Community Care's allocation for housekeeping / cleaning time is appropriate.

3. Meal Preparation

The 2011 I-HAT allowed 20 minutes per episode, 2 times per day, 7 days a week for 280 minutes per week. The 2013 I-HAT allowed for 30 minutes per episode 6 days a week.

It appears from the RN notes, that a reduction from 7 days a week to 6 days a week was warranted because the Petitioner visits with her daughter one day a week. The comment in the 2013 I-HAT further indicates that the Petitioner's caregiver prepares breakfast each day, and that the Petitioner receives 1 meal on wheels per day, which she splits into lunch and dinner. Thus, it was appropriate to allow for one full episode of meal preparation per day at 20 minutes, plus an additional 10 minutes per day to reheat the leftovers from Petitioner's meal on wheels.

4. Dishes / Clean –Up

The 2011 I-HAT allowed 15 minutes per episode, one time per week.

The 2013 I-HAT no longer had Dishes / Clean-Up as a category. Presumably, time for this task would be accounted for in the new Basic and Regular Housekeeping categories discussed above. However, since the Petitioner and her son/caregiver live together, one would think he could do her dishes at the same time he does his own dishes, especially since he only prepares breakfast for the Petitioner. As such, additional paid time for this task is not necessary.

Thus, Community Care properly eliminated time for Dishes / Clean-up.

5. Grocery / Medical Shopping

The 2011 I-HAT allowed 60 minutes per week, once a week for grocery / medical shopping.

The 2013 I-HAT eliminated time for this task. Community Care reasonably concluded that because Petitioner and her caregiver live together, that the caregiver give could complete shopping for the Petitioner, while shopping for himself. As such, it is found that Community Care correctly eliminated time for this task.

6. Laundry

The 2011 I-HAT allowed 30 minutes per episode, once a week for 30 minutes a week.

The 2013 I-HAT allowed for 30 minutes per episode, twice a week for 60 minutes a week.

The November 2013 Long Term Care Functional screen indicates that the Petitioner needs assistance with Laundry and/or Chores more than once a week. As such, it is found that the increase in time for doing laundry was appropriate.

7. Linen Change

The 2011 I-HAT indicated that time for linen changes was allowed at 13 minutes per episode, twice a week for 26 minutes.

The December 2013 I-HAT indicated that time for linen changes was allowed at 7 minutes per episode twice a week for 14 minutes.

It is unclear from the record why the time allowed for the task was reduced. No explanation was given for why it now would take less time for Petitioner's care giver to change her linens. As such, the record does not support this reduction in services.

8. Vacuuming and Dusting

The 2011 I-HAT allowed for 10 minutes to vacuum and dust, one time per week.

The 2013 I-HAT no longer contained that category of service. It is presumed that time for that service would need to be accounted for in the Basic and Regular Housekeeping services discussed above.

Given that the time to clean Petitioner's bedroom and bathroom is accounted for, there does not appear to be a need to allow for additional time for vacuuming and dusting, since any other vacuuming and dusting would be in a common area that Petitioner's caregiver would need to clean for himself, anyway. As such, it was appropriate for Community Care to eliminate time for vacuuming and dusting.

9. Supervision

The 2011 I-HAT did not allow time for supervision, but the 2013 allowed for 20 minutes per episode, three times a day, seven days a week for 420 minutes per week.

The 2011 I-HAT indicates that Petitioner will try to eat non-food items during meals. In addition, the 2013 long term care functional screen indicated under Eating that the Petitioner requires “supervision, cueing, hands-on assistance” and that “helper must be present” (Exhibit 4, pg. 35). The RN case note for November 4, 2013, indicated that the Petitioner can feed herself, but needs her meals set up for her, that her food must be cut up into small pieces and that she needs, “much encouragement to eat”. Based upon the foregoing, it is found that Community Care properly allowed 420 minutes per week for supervision during meals.

So, the total time that should be allowed for Routine Homemaking Tasks is as follows:

Accompany to Medical Appointments		120 minutes per month
Housekeeping / Cleaning	30 minutes per week	
Meal Preparation	180 minutes per week	
Laundry	60 minutes per week	
Linen Change	26 minutes per week	
Supervision	420 minutes per week	
	<hr/>	
	716 minutes per week	120 minutes per month

$120 / 4 = 30$ minutes per week

$716 \text{ minutes} + 30 \text{ minutes} = 746$ minutes per week

$746 / 60 = 12.433$ hours per week

DID COMMUNITY CARE CORRECTLY REDUCE PETITIONER’S HOURS FOR RN DELEGATED CNA TASKS?

1. Toe Nail Care

Toe Nail Care was reduced from 14 minutes per month to zero. The I-Hat for both November 2011 and December 2013 indicated that Toe Nail Care, as an RN Delegated task, is for diabetics only. The Long Term Care Functional Screen that was completed on November 4, 2013 does not list a diagnoses for diabetes, nor does any of the medical documentation submitted by Petitioner’s daughter. (Exhibit 4, pgs. 33-40; Exhibit 2) Thus, it appears time for toe nail care was incorrectly allowed under RN Delegated CNA tasks in 2011 and that it was properly excluded in December 2013 I-HAT.

2. Feeding

Feeding under RN delegated tasks was reduced from 20 minutes per episode, three times a day, 7 days a week to zero.

The comment in the 2011 I-HAT indicates that the time was allowed for purposes of supervising the Petitioner when she eats so that she does not eat non-food items during her meals. The 2011 I-Hat indicates that the Petitioner, “Must be supervised while eating as she may try to eat a napkin or other non-food item.” (Exhibit 4, pg. 41)

While the 2013 I-HAT eliminated time for feeding under RN delegated tasks, it added time for supervision, under Routine Homemaking, for meal times, 20 minutes per episode, three times a day, seven days a week. It is not readily apparent why the task was allocated under Routine Homemaking, instead of RN-Delegated tasks, but neither does it appear to be erroneous.

3. Medication Assistance

As discussed above, Community Care incorrectly eliminated time for Medication Assistance and that the proper time allowed for this task under RN delegated tasks should be 84 minutes per week.

Thus, total time allowed for RN delegated tasks should be 84 minutes per week or 1.4 hours per week.

CONCLUSIONS OF LAW

Community Care has not met its burden to prove that it correctly reduced Petitioner's Supportive Home Care Hours.

THEREFORE, it is

ORDERED

That this matter is remanded to Community Care to approve and pay for a total of 34.2 hours per week (137 units per week) of supportive home care hours; specifically, 20.4 hours per week for Assistance with ADLs, 12.4 hours per week for Routine Homemaking Tasks and 1.4 hours per week for RN delegated tasks. Community Care shall take all administrative steps necessary to comply with this order within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

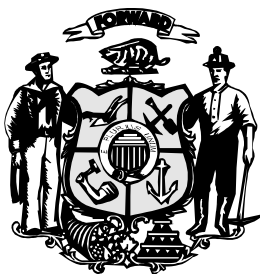
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2014.

Community Care Inc.
Office of Family Care Expansion